IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.6125 of 2006

Mohan Sadashiv Halbe & anr. Petitioners
Vs.
Surendranath Govind Kulkarni & ors. Respondents

Mr.R.S.Datar i/b. Mr.P.J.Das for petitioners.

Mr.B.M.Malcolm for resp.no.1.

CORAM: B.H.MARLAPALLE, J.

April 19, 2007.

P.C.

. Heard Mr.Datar, the learned counsel for the petitioners who are the defendants in Regular Civil Suit No.675 of 1995 filed by the landlord for eviction of the tenants and possession of the suit premises. In the said suit an application came to be filed by the defendants for deletion of their names i.e. the names of defendant nos.2 to 4 from the plaint. This application filed by the defendant nos.2 to 4 was rejected by the learned Civil Judge, Senior Division on 21/12/2001 and hence this petition.

. Though the impugned order was passed on 21/12/2001 this petition is filed for the first time

on 21st August 2006 i.e. almost after five years and it is stated that he came to know of the order only when the suit was taken up for hearing sometimes in the month of June 2006 and, therefore, he immediately applied for certified copy. This explanation is far from being satisfactory. Even otherwise on merits the defendant nos.2 to 4 submitted the application claiming that by the plaintiff's own averments they have obtained their own premises and respondent no.4 is married and has her address in Dombivli (West). Whether all the defendants or any one of them out of the defendant nos.2 to 4 are occupying the suit premises as at present along with the defendant no.1 is a matter to be decided after the parties adduce evidence and in any case the original tenant Shri Sadashiv Halbe died in the year 1984 and, therefore, the suit has been filed against all the family members represented by the defendant no.1. Certainly the trial Court will have to consider on the basis of the evidence as to who are the defendants occupying the suit premises and whether the decree of eviction is required to be passed against any of them or all of them.

. The order passed by the trial Court rejecting

the application cannot be termed as perverse or illegal and hence this petition under Article 227 of the Constitution is dismissed summarily.

(B.H.MARL